

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

JAMES MARTIN,)	CASE NO. 4:05 CV 821
)	
Petitioner,)	JUDGE DAVID A. KATZ
)	
v.)	
)	<u>MEMORANDUM OF OPINION</u>
WARDEN,)	<u>AND ORDER</u>
)	
Respondent.)	

On March 28, 2005, petitioner pro se James Martin filed the above-captioned petition for writ of habeas corpus under 28 U.S.C. § 2254. Martin is incarcerated at the Trumbull Correctional Institution, having been convicted of aggravated robbery with a firearm specification. For the reasons stated below, the petition is denied and this action is dismissed.

A federal court may entertain a habeas petition filed by a person in state custody only on the ground that he is in custody in violation of the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2254(a). In addition, petitioner must have exhausted all available state remedies. 28 U.S.C. § 2254(b).

As grounds for the petition, Martin asserts: 1) Ohio's sentencing rule is unconstitutional, and 2) he was denied effective assistance of counsel. Without regard to the potential merits of these grounds, it is evident on the face of the petition that they have yet to be raised and exhausted in the Ohio courts. The petition is thus premature.

Accordingly, this action is dismissed without prejudice pursuant to Rule 4 of the Rules Governing Section 2254 Cases. Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis on which to issue a certificate of appealability. Fed.R.App.P. 22(b); 28 U.S.C. § 2253.

IT IS SO ORDERED.

s/ DAVID A. KATZ 5/16/05

DAVID A. KATZ
UNITED STATES DISTRICT JUDGE